

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**JENNIFER PIGGOTT AND SLADE
PIGGOTT,**

Plaintiffs,

v.

GRAY CONSTRUCTION, INC. ,

Defendant/ Third-party plaintiff,

v.

**COOPER’S STEEL FABRICATORS,
INC., ALL-SOUTH SUBCONTRACTORS,
FREELAND-HARRIS CONSULTING
ENGINEERS OF KENTUCKY, INC.,
FREELAND HARRIS CONSULTING
ENGINEERS OF GEORGIA, INC., THE
HARDY CORPORATION, LATTA
PLUBING & CONSTRUCTION CO, INC.,
HWASHIN AMERICA CORPORATION
and FIRESTONE BUILDING PRODUCTS
COMPANY, LLC,**

Third-party defendants.

CIVIL ACTION NUMBER: 06-1158

MOTION TO DISMISS THIRD-PARTY COMPLAINT

Comes Now, Third-Party Defendant, Firestone Building Products Company, LLC (“FBP”) and moves to dismiss Gray Construction, Inc. (“Gray”)’s Third-Party Complaint against it. As grounds therefore, FBP states as follows:

1. This case arises out of injuries allegedly sustained by plaintiff, Jennifer Piggott, when portions of the roof on the Hwashin America Corporation facility (“Hwashin Facility”) in Greenville, Alabama, collapsed and fell on her. *See* Third-party complaint, ¶ 30. At the time the roof collapsed, it is alleged that Piggott was working as an employee for Hwashin. *See id.*

2. The plaintiff and her husband sued Gray, the general contractor hired by Hwashin to build and design the Hwashin Facility, for negligence and wantonness. *See* Plaintiffs’ Complaint.

3. On or about June 7, 2007, Gray filed a third-party complaint pursuant to Rule 14 of the Federal Rules of Civil Procedure against FBP and several other defendants.¹ Gray’s third-party complaint contains one count of negligence against FBP. *See* Count Twenty-One of Third-Party Complaint. Gray alleges that Firestone negligently performed an inspection of the roof. *See id.* Such a claim for negligence is not the proper basis of a third-party complaint.

4. Under Rule 14, a defendant (as a third-party plaintiff) may serve a summons and complaint on a person not a party to the action “who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim against the third-party plaintiff.” *See* Fed. R. Civ. P. 14(a).

¹ Gray also alleges twenty other counts against Hwashin and the subcontractors and subcontractors of subcontractors who were allegedly involved in the construction or design of the Hwashin Facility.

5. Rule 14 is a procedural rule and does not create any substantive rights. *See Travelers Ins. Co. v. Busy Elec. Co.*, 294 F.2d 139, 141 (5th Cir. 1961). It is a procedure through which a defendant can bring a party into litigation who it believes is liable to it for contribution, indemnity or reimbursement for damages sought against it by the original plaintiff, where such a substantive right exists. In this case, however, no such substantive right exists or has been alleged.

6. There is, for example, no allegation in the third-party complaint that FBP has any contractual obligation to indemnify Gray for the damages sought against it by the plaintiffs or to contribute to any such damages.²

7. As stated above, Gray's only complaint against FBP is that it was negligent in inspecting the roof. That allegation is not the proper basis of a third-party complaint because it is well settled in Alabama that there is no substantive right common to contribution or indemnity between joint tortfeasors. *See e.g., Crigler v. Salac*, 438 So. 2d 1375 (Ala. 1983). Thus, the Committee Comments to Alabama Rule of Procedure 14 specifically state that "if a plaintiff sues one of two negligent joint tortfeasors, the one sued cannot implead the other under Rule 14, for he has no substantive right against the other." *See* Comments to Ala. R. Civ. P. 14 (Alabama Rule 14 contains language similar to that in Federal Rule 14).

WHEREFORE, above premises considered, FBP respectfully moves the Court to dismiss Gray's Third-Party Complaint against it.

² Gray has alleged claims of contractual and common law indemnity as well as breach of contract claims against the other defendants, which are not alleged against FBP.

Respectfully submitted,

s/ Hope T. Cannon

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I hereby certify that I have on July 2, 2007, served the above and foregoing Motion to Dismiss on the following persons via US Mail:

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s/ Hope T. Cannon

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